

# **PROGRAMMATIC REVIEW OF THE INDIANA DNR FIELD TRIAL PROGRAM AT INDIANA FISH AND WILDLIFE AREAS**



**December 2000**

## **Purpose**

To respond to an audit finding and recommendation from the DCAA audit of the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program regarding field trials at Fish and Wildlife Areas purchased, developed, and /or managed with Federal Aid grant funds.

## **Objectives**

1. To review the field trial program at Fish and Wildlife Areas in Indiana for compliance with the applicable Federal Aid Acts, regulations, standards, grant documents and ancillary compliance requirements.
2. To identify corrective actions, if needed, to achieve legal compliance and to complete resolution of findings and corrective actions for DCAA Audit Report Number 1621-96C17900101 entitled "Audit of U.S. Fish and Wildlife Service Federal Aid Grants to the State of Indiana, Department of Natural Resources, for State Fiscal Years 1994, 1995, and 1996."

## **Findings and Corrective Actions**

The Fish and Wildlife Service Review Team has concluded the following corrective actions are required to bring the Fish and Wildlife Service and the Indiana DNR into programmatic compliance with the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant Documents and Ancillary Compliance Requirements.

### **Finding 1**

Field trials interfere with hunting on some Fish and Wildlife Areas in Indiana.

#### **Corrective Action 1**

Field trials must be discontinued on Fish and Wildlife Areas during the hunting seasons for commonly hunted game species. This must occur starting in calendar year 2001. See Discussion of Findings Section for affected hunting seasons.

### **Finding 2**

Field trials interfere with wildlife viewing, shooting range use, and fishing on some Fish and

## Wildlife Areas in Indiana.

### **Corrective Action 2**

Field trials must be discontinued when they would interfere with wildlife viewing, would cause the closure of shooting ranges, or would utilize fishing ponds during the open fishing season. This must occur starting May 1, 2001.

### **Finding 3**

Some lands purchased, developed, and /or managed with Federal Aid funds in Indiana are no longer serving their approved purpose.

### **Corrective Action 3**

Lands and the field trial support facilities that occupy them must be converted to another use that brings them into compliance with the Federal Aid Acts, rules, regulations, standards, and grant documents:

This means: (a) field trial clubhouses must be converted to another use that supports accomplishment of grant objectives by July 1, 2001; and (b) an amendment to Indiana grant FW-22-D must be submitted by July 1, 2001, which documents the needs, objectives, benefits, approaches, locations, time frames, costs, and other details regarding the new uses of the former field trial clubhouses. Otherwise, (c) the clubhouses must be removed by September 1, 2001, and the lands must be restored in a manner that supports accomplishment of grant objectives.

This means: (a) horse stalls and other horse related structures must be removed from horse barns by July 1, 2001; (b) horse barns must be converted to another use that supports accomplishment of grant objectives by July 1, 2001; and (c) an amendment to Indiana grant FW-22-D must be submitted by July 1, 2001, which documents the needs, objectives, benefits, approaches, locations, time frames, costs, and other details regarding the new uses of the former horse barns. Otherwise, (d) the horse barns must be removed by September 1, 2001, and the lands must be restored in a manner that supports accomplishment of grant objectives.

This means: (a) bird pens must be converted to another use that supports accomplishment of grant objectives by May 1, 2001; and (b) an amendment to Indiana grant FW-22-D must be submitted by July 1, 2001 to document the needs, objectives, benefits, approaches, locations, time frames, costs, and other details regarding the new uses of the former birdpens. Otherwise, (c) the bird pens must be removed by September 1, 2001, and the lands must be restored in a manner that supports accomplishment of grant

objectives.

A monthly progress report that documents progress on the planning and implementation of the above corrective actions must be submitted to the Fish and Wildlife Service until the above actions have been completed and a final report has been submitted to and accepted by the Service.

#### **Finding 4**

Some field trials on Fish and Wildlife Areas in Indiana are having a negative impact on fish and wildlife habitat.

#### **Corrective Action 4**

Lands adversely effected by field trial activities must be restored in a manner that supports accomplishment of grant objectives:

This means that (a) areas where the ground cover vegetation has been trampled and denuded of vegetation must be rehabilitated by establishment of a permanent vegetative cover and the intensity of future field trial use must be managed to prevent future trampling and denuding of vegetation; (b) that soil erosion which is causing siltation and sedimentation in streams and lakes must be stopped; (c) that mowing and other management practices designed to benefit field trials rather than wildlife must be discontinued; and (d) that stream crossings must be eliminated from field trial courses.

This means that (a) a restoration plan that identifies needs, objectives, benefits, approaches, locations, time frames, costs, and other details must be submitted for approval by the Fish and Wildlife Service by February 1, 2001; (b) that restoration work must commence by spring of 2001 and proceed annually until the work has been completed; and (c) the Service must be provided a monthly status report regarding plan implementation and progress until restoration has been completed and a final report has been submitted and accepted by the Service.

#### **Finding 5**

Some field trials at Fish and Wildlife Areas in Indiana interfere with wildlife feeding, resting, breeding, and other life activities.

#### **Corrective Action 5**

Interference with wildlife feeding, resting, breeding, and other life activities must cease. This

means there must not be any field trials during critical life stages associated with breeding, nesting, birthing, brooding, resting and feeding for game birds, game animals, and ground and shrub nesting migratory birds. This would generally prohibit field trials at Fish and Wildlife Areas from February through October. Exceptions to this prohibition are possible where a detailed and site specific field trial plan is amended into an existing Federal Aid grant and the plan and accompanying NEPA analysis clearly document there would be no interference. See corrective action 8 for further information.

## **Finding 6**

The DNR is providing preferential treatment for Field Trial Organizations by providing services of material value that only benefit those organizations and their individual members. This preferential treatment is occurring at some Fish and Wildlife Areas in Indiana that have been purchased, developed, and /or managed with Federal Aid funds.

## **Corrective Action 6**

Use of federal aid acquired lands as sites for field trial clubhouses, horse barns, and other field trial support facilities must be discontinued. Those sites and facilities must be converted to other uses that support accomplishment of grant purposes or the facilities must be removed. See Corrective Action 3.

Mowing of field trial courses and other activities that modify wildlife habitat for the benefit of conducting field trials rather than the benefit of wildlife must be discontinued. See Corrective Action 4.

Use of equipment, purchased with Federal Aid grant funds, to support field trial activities must be discontinued effective May 7, 2001.

Permits and fees for conducting field trials must represent fair market value for use of the area and must be equitable with permits and fees for hunters. The cost of permits and fees for conducting field trials must be described and justified in a site specific field trial plan that is amended into Indiana grant FW-22-D. The income generated from field trial permits and fees must be credited as program income. See corrective action 8.

## **Finding 7**

The DNR is providing services of material value to Field Trial Organizations and their members for commercial purposes and benefit at Fish and Wildlife Areas in Indiana that have been purchased, developed, and /or managed with Federal Aid funds.

### **Corrective Action 7**

Those field trials that have commercial purposes and benefits to individuals or groups must be discontinued on lands that have been purchased or developed with Federal Aid funds or are being managed with Federal Aid funds. Future field trials must clearly be of a non-commercial nature for the benefit of amateur dog owners in contrast to commercial field trial events for professionals. Commercial purposes and benefits are those that focus on winning a championship, providing cash prizes for winning, increasing the salability and profitability of dogs and their offspring, advertising commercial products, or producing net revenue for the field trial organizers.

### **Finding 8**

Field trials have become a major and dominant use at a few Fish and Wildlife Areas in Indiana that were acquired, developed, and /or are managed with Federal Aid funds. However, submission and approval of specific field trial plans that describe the proposed field trials and their inter-relationship to the existing federal aid project(s) has never occurred. Nor has compliance with the National Environmental Policy Act or other ancillary compliance requirements been achieved regarding the conduct of field trials on lands acquired, developed and /or managed with Federal Aid funds.

### **Corrective Action 8**

Proposed field trials, including field tests, must no longer occur on Federal Aid lands in Indiana unless a detailed and site specific field trial plan is amended into FW-22-D or another appropriate Federal Aid grant. The field trial plan, grant amendment, and NEPA analysis must clearly document that the level of proposed field trial activities would not interfere with the purpose for which the lands were either acquired, developed, and /or managed. Grant amendments must establish that the field trial plan would be in compliance with the requirements of the Federal Aid Acts, regulations, handbook, and other requirements. This includes the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and other Federal ancillary compliance requirements. This would require the preparation of an environmental assessment or an environmental impact statement to achieve a full description of the proposed activity and reasonable alternatives, an analysis of impacts, full disclosure, and public involvement. It would simply be a planning mechanism. It would be an effective mechanism to allow the Fish and Wildlife Service to perform its legal responsibility for oversight, monitoring, and periodic review of the Federal Aid Programs. It would also be an effective mechanism for ensuring that Federal Aid acquired, developed, and /or managed lands are available for some field trial use.

## Background

Land for Fish and Wildlife Areas in Indiana has been purchased, developed, and /or managed with grant funds under the Federal Aid in Wildlife and Sport Fish Restoration Programs. The approved purpose of these grants is to protect, develop, and manage fish and wildlife habitat and facilities for fishing, hunting, wildlife viewing, trapping, and shooting range use. Most if not all field trial activity appears to occur on only four Fish and Wildlife Areas; Glendale, Winamac, Pigeon River, and Tri-County. The original grant documents, for the four Fish and Wildlife Areas, justified the purchase, development, and /or management of these lands to benefit quail, pheasants, rabbits, squirrel, deer, waterfowl, and to provide much needed public hunting grounds. Two of the areas (Glendale and Pigeon River) were also justified on the basis of providing fishing.

The approved purpose of these grants is to protect, develop, and manage fish and wildlife habitat and facilities for fishing, hunting, wildlife viewing, trapping, and shooting range use.

.....justified.....to benefit quail, pheasants, rabbits, squirrel, deer, waterfowl, and to provide much needed public hunting grounds.

.....justified on the basis of providing fishing.

Despite the efforts to meet the demand for these fish and wildlife dependent activities in Indiana, the demand for these activities continues to exceed their availability. This fact is reflected in the following excerpt from the current project statement for Indiana Project FW-22-D, entitled Fish and Wildlife Area Development.

“Urbanization and private landowner liability concerns are causing a great decline in statewide acres available for hunting, fishing, trapping and other wildlife dependent activities. Fewer private acres available place higher demands on public areas to host these activities. State-owned properties must be actively managed to attempt to meet demand for wildlife dependent recreation. Habitat management activities undertaken on Division-managed properties can benefit a wide variety of wildlife including resident and migratory game and nongame wildlife.”

Since the mid 1980's the Fish and Wildlife Service has expressed its concern to the DNR regarding conflicts between field trials and wildlife dependent uses such as hunting that are directly related to project purposes. A letter dated January 26, 1984, regarding grant renewal appears to be the first written record sent to the DNR expressing these concerns.

Additional concerns over field trials at Glendale Fish and Wildlife Area were expressed in a Federal Aid Trip Report based on a field review of multiple areas conducted March 26-29, 1985. The following three paragraphs are from that report and are based on observation of the Hoosier Field Trial Club competition by a Fish and Wildlife Service biologist. The entire report is included in Appendix 1.

“Glendale is booked for field trials almost every weekend and about three solid weeks during March and most of April this year as well as six weeks starting in late September. This is a significant amount of time during which other users would probably not be attracted to using the area set aside for field trials. Potential conflicts between hunters and trialers could occur during the fall rabbit hunting season over use of the area.”

“The occurrence of field trials in the spring (especially during April) coincides with rabbit nesting and the initiation of quail nesting (particularly during a dry year). The activities of the trialers could adversely affect some nesting habitat and impose some stress on these game species nesting efforts adjacent to the 20 miles of courses. The latest AFA mentions potential conflicts with Canada Goose nesting. Is monitoring of goose nesting activities sufficient to insure that no adverse impacts are occurring from field trial disturbances?”

“Recent Glendale Development Project segments (#27 and 28) included work items of burning for ‘noxious weed brush control’ and developing ‘food and cover plots.’ We are concerned that trialing on the wildlife area interferes with management capability to complete springtime work items. Other work items include ‘maintaining hunter parking lots, maintaining roads,’ and ‘patrolling property’ (presumably necessary during field trial events). We are also concerned that FA funds may be used indirectly to support field trials. The current AFA [grant proposal] lists field trials as the fifth highest use at Glendale in numbers of mandays. Do field trial organizations and participants pay their fair share for benefits received and facilities used which are paid for primarily by sportsmen through license monies and excise taxes?”

This report also stated that field trial courses experienced heavy trampling from horses, especially at intersections with water courses, and that sod and soil structure impacts would be worse during a wet spring. In closing, the report makes the following statement. “We are still concerned that this is a recreational use which may ‘conflict with approved project funded activities’ as pointed out in our letter of January 26, 1984. This activity may be impacting on the values for which the property was purchased with the aid of P-R funds.”

Additional comments regarding field trials at Glendale were documented in a Federal Aid Trip Report based on a field review of multiple areas conducted May 18-22, 1987, by a Fish and Wildlife Service biologist. The following paragraph is taken from that report. The entire report is attached as Appendix 2.

“The area is mainly used by rabbit, quail, squirrel, deer, and waterfowl hunters. Management activities were noted to support the necessities of these species. Only one possible problem



could be foreseen, but not documented. Several dog trials are held on this area. A few of the trials seem to overlap into the beginning of the fall hunting season. It is a possibility that some hunting opportunities are discouraged due to the dog trial activities. This situation should be closely monitored.”

Despite the 1987 recommendation for close monitoring, there was no record in the project files of any subsequent monitoring of field trials on Fish and Wildlife Areas following the 1985 and 1987 field reviews and recommendations. However, a letter dated September 27, 1993, from the Fish and Wildlife Service to the DNR Division of Fish and Wildlife once again raised concerns regarding the DNR field trial program in regard to Indiana Grant FW-22-D, entitled “Fish and Wildlife Area Development, Maintenance and Operation.” This letter provided written documentation of previous verbal discussions over concerns about the field trial program. The following 5 paragraphs are from that report. The entire letter is attached as Appendix 3.

“Our comments are specifically directed toward unfunded activities that are considered incompatible with the Wildlife Restoration Act program. These activities include put-and-take hunting programs (pheasants in this instance) and horseback field dog trials that occur on some of Indiana’s Fish and Wildlife Areas which operate with grant funds and/or were acquired under the Federal Aid in Wildlife Restoration programs.”

“In our comments, we stated that the put-and-take pheasant program is not an allowable activity and should not occur on areas acquired or managed for wild birds with Federal Aid program funds. We also expressed a concern regarding the scheduling, associated management practices, and compatibility of horseback field dog trials. We made these statements based on the Federal Aid in Wildlife Restoration Act, established with the intention of funding projects having as their purpose ‘the restoration, conservation, management and enhancement of wild birds and mammals, and the provision for public use of and benefits from these resources’ (50CFR Part 80.5).”

“Our concerns regarding horseback field dog trial activities are often related to the loss of hunting and other recreational opportunities, conflict or interference with planned management activities, and the level of use and impacts. Another aspect to consider is that the use of the area for field trial activities can be construed as accommodating a special user group to the exclusion of the general public. Addressing this situation is an excerpt from the Federal Aid Handbook, part of the FWS Administrative Manual, 521 - FW1 - Federal Aid Program Eligibility, part 1.7C, Ineligible Activities, which states ‘providing services or property of material value to individuals or groups for commercial purposes or to benefit such individuals or groups’ is an ineligible activity. Field trial organizations and their commercial events as presently organized would fall into the above categories and are not compatible with normal management and hunting programs.”

“Our concerns regarding horseback field dog trial activities are often related to the loss of hunting and other recreational opportunities, conflict or interference with planned management activities, and the level of use and impacts.”

“There are also longstanding program regulations identifying certain types of activities as unallowable on Federal Aid acquired or managed properties. In the Secretary’s Rule, 50 CFR 80.14 (b), it states ‘Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed’. This regulation is also repeated in the Common Rule, 43 CFR 12.71. Likewise, those activities that interfere with the operation and management of Fish and Wildlife Areas are addressed in the Secretary’s Rule, CFR 50 80.14(b2), where it states ‘when such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied’.”

“In the Secretary’s Rule, 50 CFR 80.14 (b), it states ‘Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed’.”

“.....CFR 50 80.14(b2).....‘when such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied’.”

“Failure on a state’s part to comply with these regulations could be interpreted as a diversion of Program funds and would result in the initiation of an investigation by this office. If these types of programs continue or increase on fish and wildlife areas acquired or managed with Federal Aid funds, evidence of program compatibility and proof that adverse impacts to wildlife resources are not occurring must be demonstrated.”

There is no documentation in the files indicating that the letter of September 27, 1993, resulted in the Indiana DNR eliminating, reducing, or modifying the field trial program to bring it into compliance. Nor is there any documentation of any follow up investigation or required actions by the Fish and Wildlife Service requiring the DNR to demonstrate compliance or demonstrate that adverse impacts to wildlife are not occurring as a result of the program.

In 1994 and 1995, the Fish and Wildlife Service became involved with the Indiana DNR and the Indiana Field Trial Association regarding protests by the Association over the proposed establishment of a turkey hunting season at Glendale, Pigeon River, and Winamac Fish and Wildlife Areas. As a result of an expanding turkey population, the DNR Division of Fish and

Wildlife decided to open up several new counties to turkey hunting, including the Fish and Wildlife Areas within those counties. To allow free and unabated turkey hunting, it was decided to change the field trial policy to prohibit field trials at Fish and Wildlife Management Areas during the turkey hunting season. This proposal was opposed by the Indiana Field Trial Association at two DNR Commission meetings, during discussions with both the DNR and the Fish and Wildlife Service, and in letters addressed to both agencies. Appendix 4 contains an issue paper prepared by the DNR and three letters that were written by or to the Field Trial Association. This issue was finally resolved when the Fish and Wildlife Service assisted the DNR Division of Fish and Wildlife in convincing the DNR Commission that turkey hunting at Fish and Wildlife Areas must take precedence over field trials, and that displacement of turkey hunting by field trials would result in a future loss of Federal Aid funds under the Wildlife Restoration Act. Appendix 5 contains documentation presented to the Commission regarding this issue.

To allow free and unabated turkey hunting, it was decided to change the field trial policy to prohibit field trials at Fish and Wildlife Areas during the turkey hunting season. This proposal was opposed by the Indiana Field Trial Association.....

In summary, the record clearly shows the Fish and Wildlife Service identified problems with both compliance with grant provisions and compliance with the Wildlife Restoration Act and the associated Federal Regulations on a number of occasions over the last 16 years. Despite this documentation, the only actions taken by both the Service and the DNR to bring the grants and the Wildlife Restoration Program into compliance were in regard to establishment of turkey hunting at Indiana Fish and Wildlife Areas purchased, developed, and /or managed with grant funds. Other concerns, problems, and examples of non-compliance at these same areas were documented in trip reports and letters, but there was no action taken to resolve these by either agency.

In summary, the record clearly shows.....problems.....over the last 16 years.

The initiation of an audit of the Wildlife and Sport Fish Restoration Programs in Indiana under the National Federal Aid Audit Program in July 1996 provided an opportunity to further review the issue of field trials at Fish and Wildlife Areas. The outcome of that audit was an approved resolution that assigned the Fish and Wildlife Service the responsibility to evaluate field trials on Fish and Wildlife Areas purchased, developed and /or managed with Federal Aid funds. In addition, the resolution required the Service to detail their findings in a report that would include any appropriate corrective actions.

The.....audit.....assigned the Fish and Wildlife Service the responsibility to evaluate field trials on Fish and Wildlife Areas purchased, developed, and /or managed with Federal Aid funds.

## Evaluation Process

To facilitate a comprehensive evaluation of the issues described in the Background Section above, we involved a broad range of Fish and Wildlife Service expertise and program perspective. Staff from the Divisions of Federal Aid, Refuges, Ecological Services, and External Affairs were asked to participate on the review team (Team). The Team brought together biologists with experiences and expertise in wildlife management, land use planning, federal aid programs, issues surrounding refuge compatibility determinations, and threatened and endangered species. Equally important was the participation of External Affairs staff to ensure public understanding of the complex issues and to assist in communicating the findings and required actions resulting from the review.

.....evaluation.....involved a broad range of Fish and Wildlife Service expertise and program perspective.

The approach used by the Team for conducting the programmatic review was to: (1) meet and interview Indiana DNR staff responsible for planning and management at Fish and Wildlife Areas (2) gather information on wildlife resources and habitat, operation and maintenance, habitat management activities, and public recreational uses including field trials (3) review and evaluate the information (4) review and compare grant documents and program requirements with observations and information and (5) write a Team report. The basis for the review was the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements (Appendix 6).

The basis for the review was the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements.

The field trial program was observed at Glendale on March 23 and 24, and at Winamac on March 25, 2000. These field trials were the All America Quail Championships and the German Shorthair PDC (field test), respectively. The Glendale trial was a horseback field trial where the trainers, handlers, judges, and observers were on horseback. At the Winamac field test only the two judges were on horseback and everyone else was on foot.

## Federal Authority

The U.S. Fish and Wildlife Service has the authority for oversight of the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program in accord with the following citations.

Federal Aid in Wildlife Restoration Act , Section 10 - “The Secretary of Interior is authorized to make rules and regulations for carrying out the provisions of this Act.”

Federal Aid in Sport Fish Restoration Act, Section 10 - “The Secretary of Interior is authorized to make rules and regulations for carrying out the provisions of this Act.”

50 CFR 80.21 - ...”The Secretary shall have the right to review or inspect for compliance at any time.”

43 CFR 12.80(2)(e) - “Federal Agencies may make site visits as warranted by program needs.”

43 CFR 12.82(e)(1) - “The awarding agency and the Comptroller General of United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records...which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.”

## **Field Trial Program**

Many activities may be defined as dog field trials. As applied here, the term means a competition in which hunting dogs are tested for their abilities to perform specific tasks for which a breed was developed. Pen-raised game birds, such as pheasants or quail, are usually placed on the course for dogs to point, flush, or retrieve. These birds may or may not be shot for retrieval. The different types of trials serve different purposes and have very different site and management requirements.

The Indiana DNR defines field trials as any organized “Bird Dog,” “Retriever,” “Versatile Dog,” or “Rabbit Dog” activity sanctioned or licensed by a recognized State, Regional or National organization, or any such activity recognized by the Director, advertised or unadvertised, for which an entry fee is charged, in which contestants are in competition with one another for cash awards, trophies, citations, or any other prizes. Applicable laws, regulations, policy statements, application forms, and permit forms for the State of Indiana are contained in Appendix 7.

“Bird Dog” and “Rabbit Dog” trial permits may be issued from February 1 to April 30 and August 15 to (and including) the weekend prior to the opening of the regular upland game season. The upland game season started on November 5 in 1999, so the fall field trial season extended from August 15 to October 31.

“Retriever” and “Versatile Dog” permits may be issued from February 1 to (and including) the weekend prior to the regular upland game season. So the field trial season in 1999 extended from February 1 to October 31.

Exceptions to the trial seasons exist at Glendale, Pigeon River, and Winamac Fish and Wildlife Areas where there are no trials during the turkey hunting season, during the first weekend of the

deer archery season, and prior to 9 A.M. during the remainder of the deer archery season.

Formally organized horseback trials for bird dogs require the largest sites and most intensive site management. These trials are usually organized by a regional or national organization. Their clientele include many professional dog owners and trainers who follow a professional circuit that starts in the southern states each year and works its way north as the weather warms. These trials generally include substantial entry fees and prize money. The largest national trials attract large numbers of entries. This translates to large numbers of dogs, horses, and mounted dog trainers, dog handlers, judges and spectators. They may last up to a week, ten days or even two weeks. Organizers usually require that stables, dog kennels, food service, sanitary facilities, meeting facilities, storage areas, and parking for recreational vehicles, trucks, and horse trailers be available on-site. They may also demand and receive on-site services such as clean up, trash removal, traffic management, and assistance with trial activities. For the landowning agency, in this case the IDNR, management activities includes annual mowing of “courses” and “gallery trails” for spectators as well as diverting staff time from wildlife management activities to provide administrative and support services for field trials, including resolution of disputes with neighboring land owners and other users of the area. At the conclusion of competition, a winner and sometimes a runner-up dog is named. Cash prizes and additional prizes such as trophies are awarded for the winning and runner-up dogs. The real prize for winning a large National Tournament, however, is the increased value of the championship dog and the value of their off-spring. According to a professional trainer participating at the field trial, winning a National field trial championship, such as was observed at Glendale, markedly increases the value of the winning dog and the value of their off-spring. Championship dogs can reportedly be worth up to \$40,000 to \$50,000 and a one year old off-spring with promise from championship stock can reportedly be worth up to \$20,000 to \$25,000.

Formally organized horseback trials for bird dogs require the largest sites and most intensive site management.

Championship dogs can reportedly be worth up to \$40,000 to \$50,000.....

A large horseback pointing dog field trial involves many miles of trails, thousands of acres of courses, up to 300 people, up to 200 dogs, and up to 100 horses. At Glendale Fish and Wildlife Area, for example, there are eight individual one hour courses. This involves 20 miles of trail and about 30 water crossings of small streams. The eight courses cover about 5000 acres of the approximately 5500 acres of land within the area. There are an additional 2500 acres of lakes and ponds on the area.

A large horseback pointing dog field trial involves many miles of trails, thousands of acres of courses, up to 300 people, up to 200 dogs, and up to 100 horses.



**Eight field trial courses involving 20 miles of trail and about 30 stream crossings cover about 5000 acres or 90% of the land area at Glendale Fish and Wildlife Area.**

At the other end of the spectrum is the informal trial or field test conducted by a local club. These field tests rate each dog according to established criteria rather than involving head to head competition to determine the best dog. Based on observations at the Winamac Fish and Wildlife Area the clientele appeared to be amateur dog owners/hunters who were actively involved in training their individual hunting dogs.

Field tests and some formal trials, for example retrievers, may be accomplished on very limited acreage with limited infrastructure requirements and little or no management of vegetation. These typically occur over a day or weekend rather than a week or longer. At Winamac the size of the field test was much smaller than the field trial observed at Glendale. Only the two judges were on horses walking behind no more that two dogs and handlers at a time. There was no gallery that followed the dogs. Fire lanes that are regularly mowed for land management purposes were utilized for the field test, as were unmowed grasslands. There were fewer participants, the trial was limited to two days, the area used for the trial was about 40 to 60 acres in contrast to 5000 acres at Glendale. There were no stream crossings involved in the field test course.



**Field tests can be accomplished on 40 to 60 acres with limited infrastructure and little or no management of vegetation.**

We have received some conflicting data on both the number and duration of field trials on Fish and Wildlife Areas. However, this does appear to vary somewhat from year to year. A recent field trial calendar for the Indiana Field Trial Association lists a total of eight bird dog field trials for the fall of 1999, five at Glendale and three at Winamac. For the spring of 2000 it lists nine bird dog field trials, seven at Glendale and two at Winamec. Bird dog field trials have also historically been held at Pigeon River and Tri-County Fish and Wildlife Areas, but none have been held in recent years. DNR biologists reported that Pigeon River and Tri-County are used more for retriever trials and rabbit dog trials than bird dog trials, but no specific information was provided for those events. Some field trials may not occur as scheduled and some may last longer than scheduled due to bad weather or other factors, and these differences may explain why all the data does not agree. Some field trials are confined to Saturday and Sunday whereas others last up to two weeks.

The focus of this evaluation has been bird dog field trials, since they appear to constitute the majority of field trialing activity and have been the type of trials where most conflicts have been identified in the past. Some information was also gathered on retriever trials, versatile dog trials, and rabbit dog trials, but only bird dog trials were observed in the field.

The focus of this evaluation has been bird dog field trials, since they appear to constitute the majority of field trialing activity and have been the type of trials where most conflicts have been identified in the past.



## Discussion of Findings

### **Finding 1.** Field trials interfere with hunting at some Fish and Wildlife Areas in Indiana.

The present State regulations permit bird dog and rabbit dog field trials on Fish and Wildlife Management Areas from February 1 to April 30 and from August 15 to late October or early November (the weekend prior to opening of the regular upland game season). Retriever and versatile dog field trials are permitted from February 1 to late October or early November . They are not permitted beyond the weekend prior to the opening of the regular upland game season which starts in early November. Also no field trials are allowed during the spring turkey hunting season at Glendale, Winamac and Pigeon River Fish and Wildlife Areas.

Given the above regulations, field trials conducted during the dates specified above interfere with the following hunting seasons for commonly hunted species (dates used are from the 1999-2000 hunting seasons).

Fox & Gray Squirrel	August 15 -December 31
Canada Goose - early season	September 1 - 15
Mourning Dove	September 1 - October 16
Teal - early season	September 4 - 19
Deer - early archery	October 1 - November 28
Rabbit	October 1 - January 31
Woodcock	October 8 - November 21
Ducks - north	October 16 - December 5
Canada Goose - north	October 16 - 18
Canada Goose - south	October 23 - 25
Ducks - south	October 23 - 29

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Section 1 of the Wildlife Restoration Act, 50CFR80.13, 50CFR80.14,50CFR80.18, 43CFR12.71(b), 521FW1.6, 522FW6.2, 522FW6.7, and legal grant documents.

At least in 1999, there were no field tests scheduled during the fall season so there was no interference with hunting seasons. Our observations indicated that the spring field test participants were hunter/dog owners who were engaged in field tests to improve the skills of their hunting dogs, which were presumably being used for hunting during the hunting season, in contrast to dogs under professional trainers which are usually competing in field trials during the hunting season.

**Finding 2.** Field trials interfere with wildlife viewing, shooting range use, and fishing on some Fish and Wildlife Areas in Indiana.

The present State regulations allow bird dog field trials on Fish and Wildlife Areas from February 1 - April 30. These dates overlap with the period of spring bird migrations and spring activity by non-migrating birds and mammals. These migrations and spring activity combined with the absence of heavy leaf cover make spring an excellent time for viewing wildlife. However, field trial activity by participants, vehicles, dogs, and horses become the dominant presence at the areas while field trials are being conducted. This includes much barking by dogs, continuous shouting to control dogs, whistle blowing to control dogs, and shooting of blank or live shells. Dogs and horse mounted judges, trainers, handlers, and observers cover large areas of terrain. This dominant presence does not meet most visitors expectations for a fish and wildlife area. It interferes with wildlife viewing and intimidates people from trying to observe wildlife while field trials are being conducted.

Some shooting ranges are closed during field trials because of their proximity to field trial courses. This precludes their use by archers or shooters.

Some fishing ponds are used for retriever trials thus displacing anglers resulting in lost angling opportunities.



**Some shooting ranges are closed during field trials precluding their use by archers or shooters.**

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Section 1 of the Wildlife Restoration Act, 50CFR80.13, 50CFR80.14, 50CFR80.18, 43CFR12.71(b), 521FW1.6, 522FW6.2, 522FW6.7, and legal grant documents.

**Finding 3.** Some lands purchased, developed, and /or managed with Federal Aid funds in Indiana are no longer serving their approved purpose.

Field trial support facilities such as clubhouses, horse barns, bird pens, parking lots, access roads, cooking and eating facilities, sanitary facilities, and water sources now occupy land that is no longer providing wildlife habitat or hunting opportunities. These facilities do not serve a grant related purpose. Additional areas are mowed and managed as areas to park campers, horse trailers, dog trailers, and stake out dogs. Trails are located throughout the areas and are primarily used by field trial participants during trials.



**Field trial clubhouse and parking area. Field trial facilities occupy land that is no longer providing wildlife habitat and hunting opportunities or serving a grant related purpose.**





**Field trial barns and parking areas. Field trial facilities occupy land that is no longer providing wildlife habitat and hunting opportunities or serving a grant related purpose.**



**Dogs staked outside horse barn.**



**Interior of horse barn.**



**Field trial bird house and parking area for campers and horse trailers. Field trial facilities occupy land that is no longer providing wildlife habitat and hunting opportunities or serving a grant related purpose.**

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.13, 50CFR80.14, 50CFR80.18, 43CFR12.71(b), 521FW1.6, 521FW1.7B&C, 522FW6.2, 522FW6.7, and legal grant documents.

**Finding 4.** Some field trials on Fish and Wildlife Areas in Indiana are having a negative impact on fish and wildlife habitat.

At Glendale horses are trampling and denuding vegetation along trails and other heavy use areas. This effect is especially severe in wet areas where the ground cover vegetation is completely denuded in many locations. Severe erosion problems are occurring on slopes where clay soil is eroding directly into many small streams. These stream beds are being smothered by layers of sediment. These streams empty directly into Dogwood Lake, a 1400 acre fishing lake that was constructed on lands purchased with Federal Aid in Sport Fish Restoration funds and also constructed with Sport Fish Restoration funds. Heavy rains and runoff lead to turbidity, siltation, and sedimentation in Dogwood Lake, which degrades the aquatic habitat. This is a violation of State water pollution laws and regulations, Indiana Code 13-7-1-26, 13-7-1-7, 13-7-4-1, 13-1-3-8 and the Indiana Administrative Code 2-1-6.





**Horses are trampling and denuding vegetation along trails and other heavy use areas.**



**Horse use during pointing dog field trials is trampling vegetation and causing severe erosion on slopes where clay soil is washing directly into many small streams.**





**Eroded soils are washing down many small streams that empty directly into Dogwood Lake. The resulting turbidity and siltation degrades this 1400 acre fishing lake constructed with Sport Fish Restoration funds. It also violates State water pollution laws and regulations, and the Indiana Administrative Code.**

Bird dog and Rabbit dog field trials can currently be scheduled at Fish and Wildlife Areas during both the spring and fall seasons, for nearly 6 months of the year. Retriever and Versatile dog field trials can currently be scheduled from February 1 to early November, for over 8 months of the year. DNR staff must spend time on activities in support of these field trial events. Activities that modify the habitat for the benefit of conducting field trials without a wildlife management related need have a negative impact on wildlife habitat. Also included are time spent on planning and coordination activities, responding to problems and emergencies during the events, trash pick up, and end of trial clean up and repair. In addition, field trials limit when critical habitat management work such as controlled burning can be accomplished. Both the time lost working on field trial support and the limitations imposed on habitat management by the presence of the trials have a negative impact on fish and wildlife habitat. The “time cost” factor reduces time that DNR staff can spend on critical habitat management work and limits accomplishments under their Federal funded grants for fish and wildlife management, thus adversely affecting fish and wildlife habitat.

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 43CFR12.71(b), 521FW1.6, 522FW6.2, 522FW6.7, and legal grant documents.

At Winamac, the size of the area used for the field test was much smaller than the size of the area used for the field trial at Glendale. Only the two judges were on horses, there were fewer participants, the trial was limited to two days, the area used for the trial was about 40 to 60 acres in contrast to 5000 acres at Glendale, and there were no stream crossings or grooming of the habitat for the field test. Consequently, there were no apparent adverse impacts to fish and wildlife habitat from the field test.

**Finding 5.** Some field trials at Fish and Wildlife Areas in Indiana interfere with wildlife feeding, resting, breeding, and other life activities.

Noise and disturbances created by dogs, horses, people, and vehicles associated with extensive field trial activities cause disturbances to wildlife in general over an extended period of time. This includes but is not limited to disturbances in pre-breeding, breeding, and feeding situations. The nature of field trials, especially horseback field trials, dogs followed by horses both on and off trails, is not conducive to meeting wildlife needs.

Wild turkeys are especially sensitive to persistent disturbances. The “Atlas of Breeding Birds of Indiana” by Castrale, Hopkins, and Keller (1998) lists the breeding dates for wild turkey as 1 April to 31 July. The start date appears to be a conservative one, at least in southern Indiana, since members of the review team observed a strutting tom turkey with his tail fanned courting a hen turkey early on the morning of March 23, 2000, at Glendale Fish and Wildlife Area. In all likelihood, this was not the first occurrence of such activity in March. Field trials and wild turkey breeding, nesting, and rearing activity are undoubtedly in conflict during at least two weeks in March and through all of April, May, June, and July.

“For the purpose of this Act the term ‘wildlife restoration project’ shall.....include the selection, restoration, rehabilitation, and improvement of areas of land or water adapted as feeding, resting, or breeding places for wildlife.....”

Mammals nesting on the ground in grassy areas, such as the cottontail rabbit, would be especially subject to disturbance during their nesting and rearing season. According to the “Mammals of the Great Lakes Region” by Burt (1957) rabbits become sexually active as early as January, with young of the first litter being born in March or April. According to the “Mammals of Indiana” by Mumford and Whitaker (1982) rabbits become sexually active as early as January and remain so as late as October. This reference states that young rabbits have been found in the nest as early as January 8 at Brookville in



southeastern Indiana, which is about the same latitude as Glendale. Young rabbits spend about two weeks in their nest during which time they are blind, naked, immobile, and depend on suckling their mother to survive. Field trials and cottontail rabbit breeding, nesting, and rearing activity are probably in conflict during the entire field trial season.

Mammals nesting on the ground in grassy areas, such as the cottontail rabbit, would be especially subject to disturbance during their nesting and rearing season.

Birds nesting in grassy areas on the ground, such as the bobwhite quail, or in low shrubs, would be especially subject to disturbances during their nesting period. The “Atlas of Breeding Birds of Indiana” lists the breeding dates for bobwhite quail as 15 April through 31 July. Wild bobwhite quail are subject to being pointed and flushed repeatedly both during the spring and fall field trial season. This would in effect push them off their nests during the spring field trial season and break up coveys during the fall season.

Birds nesting in grassy areas on the ground, such as the bobwhite quail, or in low shrubs, would be especially subject to disturbances during their nesting period.

Extensive numbers of domestic pen reared quail are stocked for field trials. This totals about 1200 per year at Glendale and about 800 per year at Winamac, which could equal or exceed the number of wild birds in some locations on the area. Stocked birds used for field tests are shot and retrieved as part of the training exercise, but stocked birds are just flushed and left in the field for field trials. DNR Wildlife biologists believe that quail stocked during the spring field trial season inter-mix and disrupt social patterns of wild quail attempting to set up territories, select mates, and begin breeding activities. The possibility for introducing diseases and undesirable genetic traits through breeding between domestic and wild quail also exists. DNR wildlife biologists also believe that stocking extensive numbers of domestic quail that lack the wildness of wild birds attracts extra predators from surrounding areas which stay and hunt wild birds after the domestic birds have been eliminated. This would further impact existing quail populations.

Wild quail populations on the Fish and Wildlife Areas were significantly reduced by hard winters in the 1970's, with subsequent reductions in numbers of wild birds harvested in the fall. At both Glendale and Winamac, the populations have never recovered to former population levels. Biologists report, however, that quail populations have recovered in the farm lands south of Winamac. Also, spring call counts and harvest of wild quail on Winamac is highest in the northern one-third of the area where there are no field trials or stocking of domestic birds, even though the habitat is of lower quality. DNR wildlife biologists believe there is a link between the stocking of the domestic quail and the failure of wild populations to recover to their former population levels.

Field trials and bobwhite breeding, nesting, and rearing activity are undoubtedly in conflict at least from April 15 through the end of July. The conflict results from both the

direct activity associated with field trials plus the effects of stocking large numbers of domestic quail on top of reduced wild populations.

There are also non-game ground nesting birds, such as the eastern meadowlark, that would be subject to disturbance from field trials during their breeding, nesting, and rearing season. The “Atlas of Breeding Birds of Indiana” list the breeding dates for the eastern meadowlark as 1 May - 31 July. It also states the eastern meadowlark has suffered population declines due to the loss and degradation of habitat and due to nesting losses from mowing. The Eastern Meadowlark is listed as a species of management concern by the Fish and Wildlife Service in the north-central states.

....the eastern meadowlark has suffered population declines due to the loss and degradation of habitat and due to nesting losses from mowing. The Eastern Meadowlark is listed as a species of management concern by the Fish and Wildlife Service in the north-central states.

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 521FW1.6, and 522FW6.7(C), and legal grant documents.

At Winamac, as previously stated, the size of the area, the duration of the test, and the use of horses were all limited. It was not readily discernible whether or not there was interference between the field test activities and wildlife resting, feeding, breeding, or other life activities.

**Finding 6.** The DNR is providing preferential treatment for Field Trial Organizations by providing services of material value that only benefit those organizations and their individual members. This preferential treatment is occurring at some Fish and Wildlife Areas in Indiana that have been purchased, developed, and /or managed with Federal Aid funds.

The DNR provides Field Trial Clubhouses for exclusive use by Field Trial Organizations and their members. Clubhouses and associated facilities were constructed and maintained with license dollars or state tax dollars yet are not available to the general public. They can not even be used by intended beneficiaries of the areas such as by hunting clubs for meetings, by school children or university students during educational activities, or by boy or girl scouts during educational activities. Many of the field trial participants who have use of the Clubhouses are not state residents. A survey of license plates at the Clubhouse at Glendale showed licenses from Alabama (3), Georgia, Illinois (2), Kentucky (2), Michigan, Mississippi (2), North Carolina, Tennessee, and Texas, but none from Indiana. The DNR also allows Field Trial Organizations to use tractors and possibly

other equipment purchased with Federal Aid funds.



**The DNR provides Field Trial Clubhouses for exclusive use by Field Trial Organizations and their members. Many of the field trial participants who were using the clubhouse at Glendale Fish and Wildlife Area were out of state residents.**

The fee for a field trial permit to conduct a field trial and have use of a Fish and Wildlife Area by up to 300 participants, 200 dogs, 100 horses, and associated vehicles and equipment for up to ten days is \$10. By contrast, a resident hunting license is \$8.75, a game bird habitat stamp is \$6.75, a deer hunting license is \$13.75, and a turkey hunting license is \$14.75 (based on 1999-2000 hunting regulations). Thus the cost for a state resident to hunt a variety of game species in the same areas utilized by field trials would be \$44.00. At Glendale, where the vast majority of field trialers at the All America Quail

Championships were from out-of-state, a comparison to a non-resident hunter would be more appropriate. A non-resident hunter who wanted to hunt a variety of species in the same areas utilized by field trials would pay \$60.75 for a non-resident hunting license, \$6.75 for a game bird habitat stamp, \$120.75 for a non-resident deer hunting license, and \$114.75 for a non-resident turkey hunting license (based on 1999-2000 hunting regulations). Total cost for a non-resident hunter would be \$303. By contrast, non-resident field trial participants are exempt from buying any kind of hunting license. The permit fee for field trials is only \$10.00, so if actual costs were passed through to 300 participants it would cost a non-resident only \$0.03 to use a Fish and Wildlife Area for field trialing but would cost the non-resident hunter \$303.00. The non-resident hunter is being charged 10,100 times more to use an area than is the non-resident field trial participant and the resident hunter is being charged 1467 times more than the non-resident field trial participant. This is clear preferential treatment to field trial participants, especially considering the areas are purchased, developed, and managed with hunting license monies and Federal Aid excise tax monies paid by hunters.

The permit fee for field trials is only \$10.00, so if actual costs were passed through to 300 participants it would cost a non-resident only \$0.03 to use a Fish and Wildlife Area for field trialing but would cost the non-resident hunter \$303.00.
--

In addition, we learned in response to our interview questions that the DNR Commission has established a \$50 per day building rental fee for the clubhouse, horse barn, and other buildings. However, we also learned that in actual practice the Field Trial Clubs are only charged \$50 per field trial rather than \$50 per day. For a two week field trial, this is a difference between \$700 and \$50. These funds could have historically been used to defray the State maintenance costs for the buildings constructed or acquired with hunting license money or state tax money to which field trial participants have enjoyed exclusive use.

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 521FW1.6, and 521FW1.7(C) & (G), and legal grant documents.

**Finding 7.** The DNR is providing services of material value to Field Trial Organizations and their members for commercial purposes and benefit at Fish and Wildlife Areas in Indiana that have been purchased, developed, and /or managed with Federal Aid funds.

The field trial observed at Glendale was primarily a commercial event for professionals. Events of this type charge substantial entry fees for each dog and award prize money for the trainer of the winning dog and often the runner-up dog. According to a professional

trainer participating at the field trial, winning a National field trial championship, such as was observed at Glendale, markedly increases the value of the winning dog and the value of their off-spring. Championship dogs can reportedly be worth up to \$40,000 to \$50,000 and a one year old off-spring with promise from championship stock can reportedly be worth up to \$20,000 to \$25,000. These professionals compete in a National circuit and travel from state to state to do so. This is a highly organized, competitive, and commercial endeavor including commercial advertising for related products. The practice of providing services of material value for the commercial benefit of a special interest group is outside the purpose of the Federal Aid Program.

Thus, in regard to the above finding, for the field trial observed at Glendale and other like commercial events, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 521FW1.6, and 521FW1.7(C) & (G), and legal grant documents.

In contrast to Glendale, the hunt test at Winamac appeared to be an amateur trial where hunters were working with their dogs to enhance the tradition and quality of the hunting experience and to reduce the incidence of downed but unretrieved game. The purpose appeared to be individual dogs passing from one level of certification to a higher level. The dogs were being compared to a standard and were not in competition with each other. Participants appeared to be residents from the local or regional area, not professional dog trainers and handlers from out-of-state competing on a national circuit. This did not appear to be a professional event. People were at the trial with their personal hunting dog rather than professional trainers with an entire string of dogs from the owners kennel. This trial appeared to be about training hunting dogs rather than a highly competitive event that included a large financial incentive for dog trainers and owners. The field trial at Winamac did not have the appearance of a large commercial trial event.

**Finding 8.** Field trials have become a major and dominant use at a few Fish and Wildlife Areas in Indiana that were acquired, developed, and /or are managed with Federal Aid funds. However, submission and approval of specific field trial plans that describe the proposed field trials and their inter-relationship to the existing federal aid project(s) has never occurred. Nor has compliance with the National Environmental Policy Act or other ancillary compliance requirements been achieved regarding the conduct of field trials on lands acquired, developed and /or managed with Federal Aid funds.

Approval of specific field trial plans that document the inter-relationship between the existing federal aid project(s) and the proposed field trials has never been included in grant documentation and approved by the Fish and Wildlife Service. The DNR has never

provided a detailed description of the field trials that are proposed at any given site in any given year such as the number of participants, number of horses, number of dogs, number of vehicles, entry fees required, awards & prizes, program income, time frames, duration, and the expected intensity and significance of impacts in relation to their proposed annual work plan and ability to accomplish project objectives. Also, compliance has not been achieved with the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, or any other ancillary compliance requirements to which the Federal Aid Programs are subject.

.....compliance has not been achieved with the National Environmental Policy Act.....or any other ancillary compliance requirements to which the Federal Aid Programs are subject.

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1, 2 and 6 of the Wildlife and Sport Fish Restoration Acts, nor a wide range of ancillary compliance requirements.

## **Remedies for Continued Noncompliance**

Remedies for noncompliance are identified in 43 CFR 12.83 (a).

“If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the grantee or more severe enforcement action by the awarding agency,
2. Disallow all or part of the cost of the activity or action not in compliance,
3. Wholly or partly suspend or terminate the current award for the grantee’s program,
4. Withhold further awards for the program, or
5. Take other remedies that may be legally available.”

Remedies for noncompliance are also identified in 50 CFR 80.21.

“The State must agree to and certify that it will comply with all applicable Federal laws,

regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Acts. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.”

These findings of noncompliance compel the Fish and Wildlife Service as the Federal granting agency to require the grantee, the Indiana DNR, to resolve the findings in an expedient manner. Continued noncompliance would result in the Indiana DNR becoming ineligible to participate in the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program. At a minimum, this would mean that reimbursement for existing grants and approval of new grants and grant amendments would be discontinued. This would result in loss of annual funding that has ranged from \$5.3 to \$6.8 million dollars over the last three fiscal years.

The awarding agency must provide the grantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved per 43 CFR 12.83 (b). Under the program regulations, 50 CFR 80.7 provides that any differences of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determination rests with the Secretary. However, this programmatic review has identified noncompliance with regard to activities that are not questions of eligibility of activities under a grant agreement or the conduct of work funded under an active grant agreement. Thus, the provisions for appeal provided under the program regulations are not applicable to the action involved.

## **Benefits of Audit Resolution and Corrective Actions**

1. Hunting opportunities for deer, dove, rabbit, squirrel, and other species will greatly increase as interference from field trial activity will cease.
2. Opportunities for wildlife viewing, shooting range use, and fishing will increase as interference from field trial activity would cease. Opportunities for environmental education will also increase.
3. Lands and support facilities will be converted from field trial uses to use that support accomplishment of grant objectives that benefit wildlife.
4. Trampling and denuding of ground cover vegetation along trails and other areas heavily used for horseback field trials will cease and these areas will be rehabilitated. Excessive soil erosion will be stopped as will the resulting adverse effects of turbidity, siltation, and sedimentation on streams and fishing lakes. Management practices designed to benefit field trials rather than wildlife will cease.

5. Wildlife species, both game and non-game, will benefit when interference from field trials with life activities such as breeding, nesting, birthing, brooding, resting, and feeding is stopped.
6. Preferential treatment and exclusive use of facilities by field trial organizations to the exclusion of hunting groups, school groups, scouting groups, and others will cease.
7. Commercial use of lands acquired, developed, or managed with Federal Aid funds will cease.
8. The Fish and Wildlife Service and the Indiana DNR will achieve compliance with the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant Documents, and Ancillary Compliance Requirements. This will ensure the States continued eligibility to participate in these programs and receive Federal Aid funds. It will also eliminate vulnerability to a lawsuit based on noncompliance, which will protect Indiana's funding from the two Federal Aid Programs. This funding has ranged from \$5.3 to \$6.8 million dollars over the last three fiscal years and is vital to management of fish and wildlife resources in the State of Indiana.

## **Conclusion**

The subject of field trials at DNR Fish and Wildlife Areas in Indiana is a controversial issue with documentation of problems going back 16 years. These problems were addressed during the audit of the Indiana DNR under the National Federal Aid Audit program. The outcome was to assign the Fish and Wildlife Service the responsibility to evaluate field trials on Fish and Wildlife Areas purchased, developed, and /or managed with Federal Aid funds; to detail the findings in a report; and to identify corrective actions. Given its overview responsibility for the Federal Aid Programs, the Fish and Wildlife Service was the appropriate agency to conduct this evaluation.

The legal basis for this review are the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements. Based on these documents, it was concluded that Federal Aid lands are available for some field trial use provided the proposed level of field trial activities passes through the legally required federal aid planning and approval process and the legally required compliance process.

While the legal authorities cited in Appendix 6 do not specifically address field trials, House and Senate reports for the recently approved Public Law 106-408, entitled "Fish and Wildlife Programs Improvement and National Refuge System Centennial Act of 2000," do provide some



specific language on the subject of field trials. While these reports do not constitute law like the Acts themselves or have the effect of law like Program Regulations, they are nevertheless useful and helpful in regard to this issue.

The House report language includes the following passage.

“The Committee reiterates that the public uses and benefits arising from Pittman-Robertson Act projects and programs remain important. Just like wildlife dependent recreation is now a priority public use of National Wildlife Refuge system lands, similar activities including hunting, fishing, field trials with dogs, hunter education, and improvement of hunting skills on lands and interests acquired or administered with wildlife restoration funds are an important beneficial feature of the program. Guidance that sets clear and reasonable standards and recognizes the long and consistent uses of wildlife management areas for activities such as trialing may be useful.”

The Senate report contains more specific language, including the following passage.

“Concerns have been raised recently, however, that the Fish and Wildlife Service is considering prohibiting the use of Pittman-Robertson lands for field trials. Field trials are dog competitions in which tests and training or related activities are conducted to improve the hunting abilities of, and identify those superior representatives of, the hunting breeds, as well as the skills of hunters. Field trials are a legitimate use of Pittman-Robertson funded lands, provided that the field trials are not inconsistent with the objectives and purposes of the Act. Because wildlife conservation is the primary purpose of the Pittman-Robertson Act, only field trials that do not adversely affect wildlife or wildlife conservation objectives are viewed as an acceptable use of Pittman-Robertson acquired lands. A type of field trial not generally appropriate for lands acquired with Pittman-Robertson funds would be one that requires significant manipulation of terrain, landscape, or vegetation, or intensive site management. Intensive site management in this context would include regular mowing, permanent stables, dog kennels, equipment storage areas or other infrastructure onsite, which would degrade the value of the land as wildlife habitat. Additionally, field trials proposed to be conducted during nesting or breeding seasons of the wildlife species for which the land was acquired would not be appropriate. In contrast, field trials which require minimal manipulation of terrain, vegetation, or habitat would be appropriate if timed to avoid the breeding and nesting seasons of the species for which the land was acquired. Proposals for field trials which fall between these examples, or which would conflict with hunting seasons or other public uses, would require case-by-case evaluations and decisions.”

The corrective actions identified in this document in response to audit resolution will bring the Fish and Wildlife Service and the Indiana DNR into legal compliance with the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements. They will also be an effective mechanism for ensuring that Federal Aid acquired, developed, and /or managed lands are available for some field trial use that is consistent with the intent expressed in the House and Senate Reports for Public Law 106-408. The corrective actions identified in this document are very consistent with

the specific field trial language contained in the Senate Report.

Despite provisions for ensuring that Federal Aid lands are available for some field trial use, future field trial use will have to comply with existing laws and regulations under which the Fish and Wildlife Areas were purchased, developed, and / or managed. This will mean changes from how things have been done in the past. With these changes will come benefits as identified in the preceding section titled “Benefits of Audit Resolutions and Corrective Actions”. However, these changes will limit field trial use, and it is expected this will be very unpopular with some field trial organizations. However, the findings of noncompliance compel the Fish and Wildlife Service, as the Federal granting agency, to require the grantee (Indiana DNR) to resolve the findings by implementation of the corrective actions in an expedient manner.

**Submitted by:**

**Date: December 27, 2000**

